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(2014) 08 MAD CK 0213

In the Madras High Court

Case No : W.P. (MD) No. 10452 of 2014 and M.P. (MD) Nos. 1 and 2 of 2014

Ni Forex Ltd. APPELLANT

Vs

Air Authority of India RESPONDENT

Date of Decision : 13-08-2014

Acts Referred:

Citation : (2014) 08 MAD CK 0213

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Judgement

T.S. Sivagnanam, J.—The petitioner seeks for issuance of a writ of certiorarified mandamus to quash the order, dated 18.06.2014, passed by the first respondent and to direct the second respondent to issue fresh tender for grant of licence as money changer in the money exchange counter at the departure area at Tiruchirappalli International Airport.

2. Heard Mr. Irwin Aaron, learned counsel assisted by Mr. M. Thirunavukkarasu, learned counsel for the petitioner and Mr. C. Godwin, learned counsel for the respondents 1 and 2. Though the third respondent has been served and their name has been printed in the cause list, none appeared for the third respondent. With the consent of both the parties, this writ petition is taken up for final hearing at the admission stage itself.

3. By the impugned communication, dated 18.06.2014, it was stated that in order to avoid further delay in finalizing the regular contract before expiry of the contract with the petitioner i.e., on 30.06.2014 and to avoid the revenue loss to the second respondent, the technical bid of the third respondent was opened on 13.05.2014, as per the provisions of Paragraph No. 12(c) of Commercial Instruction No. 3 and therefore the request for including the petitioner''s tender at this stage cannot be acceded to.

4. The learned counsel for the petitioner submitted that on 20.02.2014, the second respondent invited an E-Tender for granting license for money exchange

counter at the departure area at Tiruchirappalli International Airport, Trichy. The terms and conditions of the E-Tender was stipulated in the said notice inviting tender, dated 20.02.2014. For the said tender there was no response. Therefore, a fresh E-Tender was invited on 04.04.2014 on the same terms and conditions. Since there was no response, the last date for submitting tender application was extended till 13.05.2014, from the original date, which was fixed as 29.04.2014 and in response thereto, two persons purchased the tender document namely the petitioner and the third respondent by downloading the application form from the website, after payment of Rs. 5,000/-. The third respondent applied for the tender within the extended period, but the petitioner failed to apply for the tender. By the said impugned communication, the bid submitted by the third respondent has been opened. The petitioner''s case is that in case of single tender, it is the consistent policy of the second respondent not to accept the same and only issue retender. In this regard, proceedings of the Airport Authority of India in respect of the Lucknow Money Exchange Counter and Amritsar Money Exchange Counter were relied on to state that all cases of single tender have been cancelled and fresh tenders have been invited. On coming to know of the same, the petitioner made a request for retender, but the same was not accepted.

5. The learned counsel would submit that in terms of the statutory guidelines, which is the commercial manual of the respondents 1 and 2, single tender cannot be accepted and this manual, which is available in the website of the Authority is updated upto 10.12.2010 and there is no provision for accepting a single tender and only retender is contemplated. Therefore, the statutory Authority should carry out the work in the manner prescribed under the Commercial Manual and therefore the selection of single tender is void. Further, laying emphasis on the persistent practice of the first respondent in respect of several single tenders in other areas by rejecting the same and calling for the fresh tender was not followed in the instant case.

6. The learned counsel would further submit that though the petitioner purchased the tender application on payment of Rs. 5,000/-, he did not apply since he was under the impression that a retender will be called for and he is legitimately entitled to expect retender as contemplated under the Commercial Manual of the respondent Organization. It is further submitted that the tender, which has been called for is in respect of a commercial transaction and there are very few bidders for the said licence and competitive bidding should have been encouraged as Government will get more revenue. Further, it is submitted that in the counter affidavit, Clause-12 of the Policy Manual has been referred to and no such amendment has been notified in the official website of the respondents and therefore the action of the respondents by relying on an amendment, which is not notified, is illegal. In support of his contention, the learned counsel placed reliance on the decisions of the Honourable Supreme Court in the cases of Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, for the proposition that even a non-applicant can question the action of the respondent and seek for retender and Garware Nylons Ltd. Vs. Collector of

Customs and Central Excise, Pune, for the proposition that unless laws are made by due notification, the same cannot be enforced.

7. The learned counsel also placed reliance on the decision of the Honourable Supreme Court in the case of Confederation of Ex-Servicemen Associations and Others Vs. Union of India (UOI) and Others, for the proposition that the petitioner is entitled to have reasonable or legitimate expectation of being treated in certain way by an administrative authority even though he has no right in law to receive the benefit and if decision is taken by the administrative authority adversely affecting his interests, he may have justifiable grievance in the light of the fact of continuous receipt of the benefit, legitimate expectation to receive the benefit or privilege which he has enjoyed all throughout. Reliance was also placed on the decision of the Honourable Supreme Court in the case of Babu Verghese and Others Vs. Bar Council of Kerala and Others, for the contention that it is a basic principle of law that if the manner of doing a particular action is prescribed under any Statute, the act must be done in that manner or not at all.

8. Mr. C. Godwin, learned counsel for the respondents 1 and 2 by relying upon the counter affidavit submitted that the petitioner is an existing licencee for money exchange counter at the departure hall in NITB of Trichy Airport from 01.07.2009 for a period of 5 years till 30.06.2014. The petitioner received tender documents on 07.05.2014 by paying Rs. 5000/- but deliberately did not submit the tender documents and thus resulted in the single participant otherwise it would be competitive bidding. The intention of the petitioner is to delay the tender process and thereby continue the business at the extension rate (10% more than the existing rate) since he is the existing licencee. The petitioner has no legal right to file the writ petition and the writ petition is liable to be dismissed on this ground alone.

9. It is further submitted that the petitioner has filed the writ petition on the basis of clause 7(3) of the Commercial Manual of Airports Authority of India. However amendment of this clause had been issued vide commercial instruction No. 3, dated 01.04.2011, vide Clause 12(c) stating that after calling the tender for two times, with each one extension, if only single tender is received the same may be processed and forwarded to the RHQ/CHQ for approval with specific recommendations of Airport incharge. The petitioner has not challenged the amended rule and hence this writ petition is liable to be dismissed.

10. Further, it is submitted that the existing contract expired on 30.06.2014, therefore well in advance tender was called for four times and two calls, which each one extension for submission of tender and in the fourth call the petitioner obtained the tender documents by paying Rs. 5000/- on 07.05.2014. The petitioner was aware that already a tenderer had participated in the tender but he deliberately did not participate in the tender with the intention to delay the tender process expecting the MRLF will be reduced in the subsequent calls. Further the petitioner is aware that he is an existing licencee and he will get

extension till the new tender is finalized. The letter of the petitioner, dated 12.06.2014, was properly replied by the first respondent by electronic mail, dated 19.06.2014. The licence for the petitioner has been extended by three months from 30.06.2014 or till the finalization of the contract which ever is earlier with 10% enhanced amount on the existing licence with effect from 01.07.2014. Even though the tender was called for four times two calls with one each extension to get competition in the selection process there was not much response from the tenderers. Hence, to avoid delay in finalizing the fresh licence before expiry of the existing licence (ie) on 30.06.2014 the single tender was processed as per the amendment, dated 01.04.2011, commercial instruction vide clause 12(c). The single tender was processed in terms of amended instruction and the petitioner is aware of the same.

11. The learned counsel further submitted that granting of extension of licence period for a short duration to the existing licencee is normal procedure when the fresh contract is not finalized in time due to various factors as the facility is mandatory to be provided to the international passengers. Accordingly the licence of the petitioner was extended by three months from 30.06.2014 or till the finalization of contract which ever is earlier with 10% enhanced amount on the existing licence fee with effect from 01.07.2014. It is submitted that the petitioner can not take this as a ground to challenge the single tender of the third respondent processed in terms of amended instruction and forwarded to the first respondent. The intention of the petitioner is that to delay the tender process of new contract enabling him to continue the business in terms of extension of existing licence.

12. The first issue to be considered is as to whether the second respondent was justified in opening the bid submitted by the third respondent, who was a single tenderer. In this regard, reference has been made to Amended Regulation 12(c) of the Commercial Manual published by the first respondent. Regulation 12(c) of the amended notification, was published vide amendment, dated 01.04.2011. By the said notification, there certain amendments were brought out in the Commercial Manual initially published during 2010 and the amendment was to made applicable with immediate effect and has been issued with the approval for the competent authority. One of the amendment No. 12 pertaining to single tender reads as follows:

Amendment

12. Single Tender

(a) When single bid/offer is received, then the tender process may be extended by 15 days. Even if after extension only single bid/offer is received, or after technical evaluation only single tender remains, it is to be cancelled and fresh tenders invited.

(b) While re-inviting tenders, of any modification in MARL and other terms and conditions are required then the provisions in Commercial Manual to followed.

(c) Even after following the above process if only a single tender is received/ remains after (a) above, then the same may be processed and forwarded to CHQ for approval with specific recommendations of Airport-Incharge/Red.

13. It is not in dispute that in terms of Clause (c) of the said amendment, after following the procedure contemplated in Clauses (a) and (b), if only a single tender is received then the same may be processed and forwarded. This procedure has been adopted by the second respondent. The petitioner has not challenged Clause (c) of the amendment as referred above, but would state that it has not been notified and he was not aware of the amendment as it was not updated in the official website of the second respondent. The respondents 1 and 2 have been established under the Airport Authority of India Act, 1994 for better administration and management of Airports and several enclaves. In order to achieve the objects of the Act, various facilities are provided at Airport and one of such facility is for money exchange and licences are being granted in the departure hall of international airports. In accordance with the procedure laid down in the manual of administration of the respondents, a notification was issued in the form of commercial instruction on 01.04.2014 and in which various amendments were made to the Commercial Manual, 2010. The amendment came into force as on the date of notification, dated 01.04.2011. Therefore, to state that merely because the amendment was not updated in the second respondent''s website, such non-updation would nullify the amendment, which has been vogue since April 2011. Hence, the contention raised by the learned counsel for the petitioner is liable to be rejected.

14. Secondly, it is contended that in Lucknow Money Exchange Counter and Amritsar Money Exchange Counter, single tender has not been considered and repeatedly retender were called for. If any practice is made by any of the Airport Authority in other region contrary to Commercial Manual, 2010, the same cannot be a precedent and any wrong precedent or failure to follow the Rule cannot be accepted as a binding precedent. Therefore, the submission made in this regard deserves to be rejected.

15. Once we steer clear of this legal and factual position as regards the notification of the amendment by introducing Clauses (a) to (c) in respect of single tender procedure, if we look into the facts of the case, it has to be stated that the petitioner has no locus standi to maintain this writ petition and seek for quashing the impugned proceedings. Admittedly, the petitioner is an existing licensee. He was aware when the first tender notification was issued on 20.02.2014. He did not respond to it. Therefore, the period of licence granted to him was temporarily extended subject to conditions. Subsequently, a second tender notification was issued on 04.04.2014 and the petitioner did not respondent within the time permitted. In terms of the amendment, the cut-off date could be extended as per Clause (b) (cited supra), this was done and time was extended till 13.05.2014. Within such extended time, the petitioner obtained a tender form by payment of Rs. 5,000/-. This fact is not in dispute. Similarly,

the third respondent also obtained the tender form. Though the petitioner purchased the tender form, he did not apply for the tender within the time stipulated i.e., 13.05.2014. In such circumstances, the petitioner is estopped from questioning the decision of the second respondent to open the bid submitted by the third respondent by relying upon the amended regulation, which came into force on 01.04.2011. The alleged practices done in other airports cannot be a precedent when such action was not in accordance with the statutory guidelines of the first respondent.

16. Admittedly, there is no challenge to the amendment brought out by the respondents in respect of single tender transaction. In the interregnum, the petitioner''s licence stood extended till October, 2014 or till the finalization of the tender. Therefore, the question of pleading legitimate expectation is a farfetched plea, when the petitioner after obtaining an application did not even care to submit his tender and this Court is at loss to understand as to how the petitioner would legitimately expect that the tender would be cancelled and retender would be called for and then he will decide whether to respond or not in the event a retender is made. As rightly contended by the learned counsel for the respondents 1 and 2, if the prayer sought for is granted and writ of mandamus is issued, it would be contrary to the statutory guidelines framed by the first respondent and a writ of mandamus cannot be issued to the second respondent to act contrary to their statutory guidelines. Further, the second respondent submitted that the bid amount offered by the third respondent protects the interest of the revenue and he has offered Rs. 2,70,000/- as licence fee.

17. Further, it is seen that the process adopted by the second respondent and opening the bid submitted by the third respondent is in accordance with the amended provision relating to single tenders. The learned counsel placed reliance on the decision of the Honourable Supreme Court in the case of Confederation of Ex-Servicemen Associations (cited supra). The facts of the said case is entirely different and the said doctrine would be applicable in cases where there was a clear communication that the administrative authority will act in a particular manner and the petitioner would be treated in a particular manner. In the instant case, the petitioner did not submit any tender. Furthermore, the first tender was cancelled and retender was issued. In the retender initially there was no response. Therefore, the second respondent invoked the amendment notification and extended the time till 13.05.2014, that itself would clearly show that the second respondent followed their statutory guidelines and in such circumstances there is no representation made by the second respondent that the petitioner would be dealt with in a particular fashion and past practices in two other airports can hardly be of any relevance. Hence, the decision does not render any assistance to the case of the petitioner. Infact, the second respondent has acted in accordance with the statutory guidelines and in the absence of any deviation, the decision taken by the second respondent cannot be faulted. Hence, for all the above reasons, the petitioner has not made a case for issuance of a writ of mandamus as prayed for and accordingly, the same is liable to be dismissed.

18. In the result, the writ petition fails and the same is dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

